

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA  
Augusta Division

IN RE:	)	Chapter 7 Case
	)	Number <u>89-11727</u>
WREN HOMES OF AUGUSTA, INC.	)	
	)	
Debtor	)	
_____	)	
WREN HOMES OF AUGUSTA, INC.	)	FILED
	)	at 4 O'clock & 59 min. P.M.
Plaintiff	)	Date: 6-19-90
	)	
vs.	)	Adversary Proceeding
	)	Number <u>89-1090</u>
K. C. STEVENS	)	
	)	
Defendant	)	

**ORDER**

Wren Homes of Augusta, Inc., herein "Wren", filed for relief under Chapter 7 of Title 11 United States Code on November 6, 1989. At that time Wren was engaged in litigation in the Superior Court of Columbia County, Georgia, seeking a writ of possession against the defendant, K. C. Stevens, hereinafter "Stevens". Wren removed the writ of possession action to this court.<sup>1</sup> Based upon the evidence presented at trial and briefs

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<sup>1</sup>Wren's removal application can be construed to assert that the writ of possession action is an action seeking turnover of property of a bankruptcy estate, a core proceeding under 28 U.S.C. §157(b)(2)(E) which may be heard by this court under the general reference from the district court of cases under title 11 and all core proceeding arising under title 11. The removal was pursuant to 28 U.S.C. §1452(a) which authorizes a party to remove any claim or cause of action in a civil action, with certain exceptions not applicable here, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under 1334 of title 28. Clearly, this court has jurisdiction to hear a core proceeding such as complaints seeking turnover of property of the estate. However, removal is to the district court and,

submitted by counsel, this court makes the following findings of fact and conclusions of law.

Neal Alan Sanford and Rebecca Ann Sanford purchased Lot 11 Sweatman Subdivision, Columbia County, Georgia from Stevens. At the time of purchase, the lot was subdivided in half with the Sanfords paying cash for half and financing the remaining half with Stevens. By purchase agreement dated February 15, 1985 the Sanfords agreed to purchase from Wren one (1) Horton Summit Double Wide Mobile Home Serial No. H39741GL including septic tank system, brick foundation, concrete driveway, electric hookup and front porch with dormer for a total cash sale price of Forty Six Thousand Seven Hundred Fifty and No/100 (\$46,750.00) Dollars with Wren paying all closing costs and discount points of sale at closing. The agreement provided

Title to said equipment shall remain in the Seller until the agreed purchase price therefore is paid in full in cash or by the execution of

a Retail Installment Contract, or a Security Agreement and its acceptance by a financing agency; thereupon title to the within

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subject to the district court's discretion, transfer or referral to this court for final determination. Section 157 is discretionary, "may". Rather than contesting whether removal was proper, Stevens chose to try the matter and this court will ignore the apparent procedural defect in order to resolve the matter on its merits.

described unit passes to the buyer as of the date of either full cash payment or on the signing of said credit instruments even though the actual physical delivery may not be made until a later date.

Some time subsequent to February 15, 1985 but prior to September 23, 1985 Wren complied with its requirements under the purchase agreement. At the Sanfords' lot, Wren set the double wide mobile home on concrete block pilings and removed the wheels and axles from the mobile home. A nonsupporting brick apron was installed around the base of the mobile home. A concrete drive and walkway was poured, septic tank installed and a wooden porch constructed at the front entrance to the mobile home.

The Sanfords failed to pay the cash purchase price in full or execute a retail installment contract or security agreement as required. The manufacturer's statement or certificate of origin for the aforescribed mobile home remains in the name of Wren. By warranty deed dated September 23, 1985 and for a stated consideration of Five Thousand and No/100 (\$5,000.00) Dollars, the Sanfords reconveyed the entire Lot 11 to Stevens. The legal description used in the warranty deed described the property conveyed as all the lot or parcel of land, together with all improvements thereon. The mobile home has a current value of not less than Eighteen Thousand and No/100 (\$18,000.00) Dollars after

removal from the lot. The mobile home was installed in a poor

location on the lot and following removal of the mobile home, all remaining improvements must also be removed at a cost of Four Thousand Three Hundred Ninety Five and No/100 (\$4,395.00) Dollars.

In opposition to the requested turnover, Stevens maintains that the mobile home has become part of the realty conveyed to him by the deed of September 23, 1985. Alternatively, should this court reject this position and find the mobile home to be personalty and property of the Wren estate, then Stevens seeks recovery of Four Thousand Three Hundred Ninety Five and No/100 (\$4,395.00) Dollars from the proceeds derived from the disposition of the double wide mobile home as reimbursement for costs he will incur in removing the driveway, foundation, brick apron and septic tank from his property.

The double wide mobile home remains personalty. Three factors considered in reaching this determination are

1. The degree to which the mobile home has been integrated with or attached to the land;

2. The intention of the parties with regard to the status of the mobile home; and

3. Whether there is a unity of title between the personalty and the realty at the time the mobile home allegedly becomes part of the land. James D. Walker, Jr., Trustee v. Greta Ann Washington and Gracewood Federal Credit Union, (In re: Washington), 837 F.2d 455, 456-457 (11th Cir. 1988), Homac, Inc. v. Fort Wayne Mortgage Company, 577 F.Supp. 1065, 1069 (N.D. Ga.

1983). As to the first criteria, the mobile home in question has not been sufficiently integrated with or attached to the land to be considered a permanent improvement. It is the intent of the trustee to remove and sell the mobile home, and according to competent testimony, this can be accomplished by removing the nonsupporting brick apron, reinstalling the wheels and axles under the mobile home and pulling the mobile home from the foundation columns.

As it pertains to the second criteria, from the purchase agreement, title to the mobile home remained in Wren until the purchase price was paid in full in cash or by the execution of a retail installment contract or security agreement. Clearly the intent of the parties under the purchase agreement was that the mobile home remained personalty.

Regarding the third criteria, unity of title is lacking to establish the mobile home as a part of the realty. At no time was title to the mobile home in the Sanfords. The only evidence of title establishes that title remained with Wren.

The double wide mobile home became property of the estate as of the date of filing and subject to turnover. 11 U.S.C. §541.<sup>2</sup>

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<sup>2</sup>11 U.S.C. §541(a) provides in pertinent part:

(a) The commencement of a case . . . creates an estate. Such estate is comprised of all the following property wherever located and by whomever held:

(1) . . . all legal or equitable

Having determined that title to the property contracted to be sold under the purchase agreement of February 15, 1985 remained in Wren, this ownership interest of the estate extended not only to the double wide mobile home but also to the septic tank system, brick foundation, concrete driveway, electrical hookup and front porch with dormer installed on the property. Should the trustee abandon his interest in the other property the cost of removal of these items, Four Thousand Three Hundred Ninety Five and No/100 (\$4,395.00) Dollars, gives rise to an unsecured claim against the estate. 11 U.S.C. 101(4).<sup>3</sup> As the holder of an unsecured claim in the amount of Four Thousand Three Hundred Ninety Five and No/100 (\$4,395.00) Dollars Stevens will be allowed to participate in distributions from the estate to the extent assets are available

pursuant to 11 U.S.C. §507.

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interests of the debtor in property as of the commencement of the case.

<sup>3</sup>11 U.S.C. §101(4) defines claim as

(a) a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or

(b) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured;

It is therefore ORDERED that defendant K. C. Stevens turnover property of the estate, one (1) 1985 Horton Summit Double Wide Mobile Home Serial No. H39741GL to James D. Walker, Jr., trustee for the estate of Wren Homes of Augusta, Inc. by allowing the trustee access to the location of the mobile home for removal at the estate's expense. Further ORDERED that following removal of the mobile home, K. C. Stevens is allowed an unsecured claim in the amount of Four Thousand Three Hundred Ninety Five and No/100 (\$4,395.00) Dollars. No monetary damages are awarded.

JOHN S. DALIS  
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia  
this 19th day of June, 1990.